



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 11105904

Date: AUG. 13, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner submits additional documentation and a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or

educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

<sup>2</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>3</sup>

## II. ANALYSIS

Although not addressed in the Director's decision, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.<sup>4</sup> The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.<sup>5</sup> For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated eligibility under the first prong of the *Dhanasar* analytical framework.

The Petitioner describes herself as a registered nurse and "doctorate-prepared nurse educator." At the time of filing, the Petitioner was working full-time as a registered nurse at two facilities, [REDACTED] and [REDACTED]. When responding to the Director's request for evidence (RFE), the Petitioner indicated she also obtained additional employment as a part-time clinical instructor at [REDACTED] College.<sup>6</sup> The Petitioner asserts that due to the rapidly increasing aging population, the United States is experiencing and anticipating a nursing shortage crisis, but "nursing schools cannot meet the demand for [registered nurses] . . . ." The Petitioner further notes that her "research interest [ ] falls with major injury [FMI] has the substantial merit as well as valuable national importance to save lives and reduce healthcare cost from Medicare and Medicaid." The Petitioner contends:

[A]s an RN and nurse educator, I would not only bring my expertise to nursing education and myself as a trained RN to lower the nursing shortage, but my proposed endeavor as a well-informed nurse educator has substantial merit and national importance to help reduce the nursing shortage on the whole, save money on a national scale, and even save lives.

The Director stated that the Petitioner had met the first prong in *Dhanasar* but did not provide any analysis. Then immediately following, the Director confusingly stated that the Petitioner is not eligible for, and does not merit, a national interest waiver as a matter of discretion, and then moved on to discuss the second prong. On appeal, the Petitioner points out the inconsistency in the Director's statements and asserts that she meets the first prong. Upon review, we conclude that the Petitioner's proposed work as a registered nurse and nurse educator has substantial merit. However, we withdraw the Director's determination that the Petitioner meets the first prong under the *Dhanasar* framework because the record does not establish the Petitioner's endeavor has national importance.

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<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>4</sup> The Petitioner presented copies of her diplomas and transcripts for her doctorate in nursing from [REDACTED] University in Ohio and master of science in nursing from [REDACTED] in Pennsylvania. See 8 C.F.R. § 204.5(k)(3)(i)(A).

<sup>5</sup> The Petitioner submitted evidence to support the petition. While we may not discuss every document submitted, we have reviewed and considered each one.

<sup>6</sup> We note that, while information about the nature of the Petitioner's proposed endeavor is necessary for us to determine whether she satisfies the *Dhanasar* framework, she need not have a job offer from a specific employer as she is applying for a waiver of the job offer requirement.

With respect to the Petitioner's proposed care and treatment of patients and her clinical nursing instructor responsibilities, the record does not establish that her clinical work and nursing instructor role would impact the nursing field and healthcare industry more broadly, as opposed to being limited to the patients she serves and the nursing students she teaches. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar* we also determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. Accordingly, without sufficient documentary evidence of its broader impact, the Petitioner's work as a registered nurse and a clinical nursing instructor does not meet the "national importance" element of the first prong of the *Dhanasar* framework. The evidence here does not demonstrate that the implications of her proposed endeavor will rise to the level of national importance.

The Petitioner also contends that her research "is a topic which has the substantial merit as well as valuable national importance to save lives and reduce healthcare cost from Medicare and Medicaid," and submits letters in support of the petition. For instance, V-F-, a retired teacher and the Petitioner's personal acquaintance, states that the Petitioner will "continue to be productive in her research and in her work as a nurse and an educator." Likewise, P-V-, PhD, the Petitioner's PhD advisor, avers that the Petitioner "has made an impact in gerontological nursing research, and falls in nursing home settings in particular." While the letter writers hold the Petitioner in high regard, the submitted letters do not provide sufficient information regarding the specific research projects that the Petitioner will engage in or explain the national importance of her proposed work under the *Dhanasar*'s first prong.

The Petitioner indicated in response to the Director's RFE that she will:

[C]ontinue doing research and implementing my research findings on risk factors for FMI among [nursing home (NH)] residents. After validating the FMI model through further research, the FMI model can be used in mobile applications to prevent and reduce FMI among NH residents.

As stated above, the Petitioner's proposed endeavor principally involves serving patients as a registered nurse, while performing part-time services as a clinical instructor to nursing students. While the Petitioner discusses her prior academic research in describing her proposed endeavor in the RFE response and on appeal, she has not provided sufficient detail regarding her plans to continue her FMI research activities. For instance, she has not shown the amount of time she intends to devote, if any, to conducting research, nor has she provided evidence specific to the FMI research projects that she intends to carry out, or the capacity in which she will perform research prospectively.<sup>7</sup> In *Dhanasar*, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." 26 I&N Dec. at 889. Here, the record does not show that the research work the Petitioner proposes to undertake, will offer original innovations to advance the aforementioned industry, or that it otherwise will have wider implications in her field.

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<sup>7</sup> It is the Petitioner's burden to prove by a preponderance of evidence that it is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.*

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

### III. CONCLUSION

As the Petitioner has not met the requisite first prong set forth in the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.